

S. AMANDA MARSHALL, OSB #95347
United States Attorney
District of Oregon
WILLIAM E. FITZGERALD, OSB #91515
Assistant United States Attorney
405 East 8th Avenue, Suite 2400
Eugene, Oregon 97401
(541) 465-6771
bud.fitzgerald@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
(EUGENE DIVISION)

UNITED STATES OF AMERICA,)	11-CR-60111-HO
)	
Plaintiff,)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
v.)	
)	[Sentencing: 1/25/2012; 1:30 p.m.]
WILEY ROY NELSON,)	
)	
Defendant.)	

The United States of America, by and through its undersigned attorneys, S. Amanda Marshall, United States Attorney, District of Oregon, and William E. Fitzgerald, Assistant United States Attorney, hereby submits the following sentencing memorandum in anticipation of Defendant Wiley Roy Nelson's change of plea and sentencing on January 25, 2012.

The parties have reached a plea agreement wherein Defendant has promised to plead guilty to Count 1 of the Information, which alleges entering a restricted area, in violation of Title 16, United States Code, Section 460d, and Title 36, Code of Federal Regulations, Sections 327.12(a) and 327.25(a).

In exchange, the United States has agreed to move for dismissal of Count 2, alleging entering military property for an unlawful purpose, in violation of Title 18, United States Code, Section 1382, and to bring no additional charges involving the instant investigation.

The parties have agreed to at least 2 years of probation with a condition of community service in lieu of a fine. The parties will ask that the Court consider ordering the defendant to perform community service at the Lookout Point Dam, subject to the concurrence of the Corps of Engineers.

The parties defer to the Court and Probation as to the necessity of a condition requiring the defendant to undergo a mental health evaluation. The number of hours of community service is open to argument, but the Government recommends at least 60 hours to convey the appropriate message regarding the seriousness of the offense.

OFFENSE CONDUCT

A. Trespass at Lookout Point Dam

On March 2, 2011, at about 9:48 a.m., Lane County, Oregon, Sheriff Deputies were dispatched to the Lookout Point Dam near Lowell, Oregon, to investigate a suspected trespass. Mark Chappelle, a Park Ranger with the U.S. Army Corps of Engineers, produced a surveillance video which showed an unknown male with a high end camera jumping over the fence and taking photos of the dam.

On the video, a young male is seen wearing a camouflaged jacket walking inside the fence on the dam. A microwave sensor activated the video system at 1:22 a.m. The male is then seen walking to a point on the dam, stopping, and taking several photos at 1:29 a.m. At 1:34 a.m, the male is seen jumping over the south fence near Highway 58 and landing outside the secure area. The male is then observed taking several photos toward the dam. No trespassing signs are located on the gate nearby. The male is then seen jumping over the fence again and back into the secure area. He is last seen near the north side of the dam and still inside the fence at 2:01 a.m.

B. Power Outage at Alton Baker Park

On May 7, 2011, there was a power outage in Eugene, Oregon, determined to be caused by damage to the Willamette to Oakway transmission line. The line had to be

de-energized until repaired and the Eugene Water and Electric Board (EWEB) sustained a loss of approximately \$3,000 as a result of the damage.

On May 13, 2011, Mia Nelson, a resident of Lowell, Oregon, contacted EWEB and informed EWEB that her son, Wiley Roy Nelson, suffered severe burns from coming into contact with the electrical line on the same date as the power outage. Wiley had apparently climbed a tower in Alton Baker Park, Eugene, Oregon, and had taken pictures of lighting in and around the park. While descending the tower, Wiley came into contact with either a line or a transformer and suffered severe burns on two fingers and his right leg. A friend who was with Wiley drove him to River Bend Hospital for medical attention. From River Bend, Wiley was transported to the Oregon Health Science University (OHSU) burn unit for further treatment. Later, when Wiley was interviewed by EWEB officials, he took complete responsibility for the power outage and EWEB ultimately declined to pursue civil or criminal remedies.

C. Wiley Nelson Identified as Trespasser

The U.S. Army Corps of Engineers posted a \$1,000 reward for information leading to the arrest and prosecution of the person seen trespassing at Lookout Point Dam on March 2, 2011. In June 2011, after posting of the reward, Mia Nelson contacted the U.S. Army Corps of Engineers and reported the person seen in the video at Lookout Point Dam was “probably my son.”

D. Wiley Nelson's Admissions

During an FBI interview on June 9, 2011, Wiley Nelson stated that he was very familiar with the dam as he had been raised in Lowell, Oregon, so had lived near the dam nearly all his life. He said he had been inside the control room and around the dam on tours. He said that before 9-11 the dam was open to visitors but that has changed. Despite that, Nelson did not think anyone would care that he was on the dam taking pictures. He figured if he was not supposed to be there someone would tell him to leave. He saw the no trespassing signs on the fence but did not pay any attention to them.

Nelson said he kept the photos he took from the dam. He thought he had put one of them on his Facebook page. He claimed that none of the pictures were of the dam. They were of the lake behind the dam and the water downstream from the dam with the city of Lowell in the background.

APPLICABLE LAW

Under 36 C.F.R. Section 327.12(a), the [Army Corps of Engineers] District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. Under 36 C.F.R. Section 327.25(a), any person who violates the provisions of that regulation may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both.

RECOMMENDATIONS

Accordingly, the Government recommends a sentence of at least 2 years of probation, along with an order to perform 60 hours of community service.

DATED this 18th day of January, 2012.

Respectfully submitted,

S. AMANDA MARSHALL
United States Attorney

/s/William E. Fitzgerald
WILLIAM E. FITZGERALD
Assistant United States Attorney